

REMARKS

This Response is to the non-final Office Action dated May 23, 2003. Claims 1 to 21 are currently pending. Claims 1, 9, 10, 14 and 18 are being amended herein. The specification is being amended in certain places for clarity and correctness. No new matter has been introduced by way of any of the amendments.

In the Office Action, Claims 1 to 21 were rejected under 35 U.S.C. § 103(a) as being obvious in view of U.S. Patent No. 3,743,084 to Douglas ("*Douglas*") and U.S. Patent No. 1,984,351 to Johnson ("*Johnson*"). Claims 10 to 12 and 14 to 17 were rejected under 35 U.S.C. § 102(b) as being anticipated by *Johnson*. Claim 14 was rejected under 35 U.S.C. § 112, second paragraph, for lack of antecedent basis for the phrase "the member".

Regarding the § 112 rejection, Claim 14 has been amended to depend from Claim 11. Claim 11 provides the proper antecedent basis for the term "the member" in Claim 14.

Regarding the obviousness rejections in view of *Johnson* and *Douglas*, Applicant first wishes to discuss the primary reference used in those rejections, namely, the *Douglas* reference. The package of *Douglas* differs from the present invention in a number of respects. In one respect, the outer casing of *Douglas* is meant to be reusable. Indeed in column 5, line 50, *Douglas* discusses the use of the outer case again with a different insert once the product from an initial insert is completely consumed. *Douglas* in one embodiment also includes an outer case having snaps 33 and 34, allowing the casing to be folded over the product carrying insert.

That embodiment of *Douglas* is quite different from the one disclosed by Applicant, which shows a packaged housing 12 that receives a consumable insert 14. Housing 12 of Applicant's invention does not fold open and snap to close and is not reusable after each of the products 46 discussed in the present invention is consumed.

Moreover, the inserts 40 and 75 of *Douglas* fold together so that the product is sandwiched between two outer layers. *Douglas* discloses the provision of linking panels 42 and 76. *Douglas* also discusses in connection with linking panel 42 that it is desirable not to put tension on the product compartments (column 4, line 37). The linking panel 42 is therefore provided as a spacer, which is at least equal to the height of the commodity compartments, to shield the compartments and products therein from mechanical stress. In *Douglas* it is desirable not to place stress on the product carrying compartments. Accordingly, as noted by the Patent

Office, *Douglas* not disclose sizing the housing relative to the insert to produce frictional engagement. With Applicant's invention on the other hand, the compartments are advantageously and expressly used to provide such stress and such engagement.

As seen in the figures of the present invention, the insert is folded so that the product compartments face outwardly, the opposite of the way that the insert is folded in *Douglas*. In *Douglas*, the compartments have to be in offset registration on each half of the insert so that the insert can be properly folded together. In the present invention, the compartments are shown to be in line. The insert of the present invention therefore would not work if used in or applied to *Douglas*. *Douglas* also provides the intermediate panels 42 and 76 that allow for the insert halves to be properly spaced apart from one another. Such panels are not necessary in the present invention and indeed the narrowly hinged connection of the insert halves of the present invention helps to provide a springiness to the insert of same. Moreover, the offset panels of *Douglas* would not work properly if folded outwardly as is taught by the present invention.

The outwardly facing compartments of the present invention also provide a good surface with which to use as a biasing or contacting member. The reason is that when product is removed from the insert of the present invention, the base member or foil sheet is ruptured and unformed, the compartment itself however at least partially holds its shape. The plurality of compartments help to provide a number of pressure points for holding the insert against the outer housing. Thus, at least some of the compartments continue to contact the housing even after those compartments have been pressed to remove the product contained therein.

Douglas cannot teach and indeed teaches away from the above described advantages of the present invention, as clarified in the present claims. *Johnson*, while suggesting that the clearance between an insert and a container can be made small to eliminate flap portions 3 and 4 thereof, provides no hint as to how its apparatus would be configured to at the same time safely house the product therein. *Johnson* for one does not disclose the use of sealed compartments to hold product and protect same from open air. *Johnson* instead allows the product to be open to atmosphere when the receptacle portion 5 is removed from the covering 1. That is, *Johnson* has no structure analogous to the compartments of the present invention. The *Johnson* device has no structure that can be unsealed to yield a product, wherein that unsealed structure is reused to reapply positive pressure to an external housing. *Johnson* cannot therefore remedy the fact that

Douglas expressly teaches away from using such compartments for biasing or press fitting and does not provide an anticipatory teaching for the currently maintained claims.

The above-described distinctions and advantages of the present invention have been clarified in the claims. For example, Claim 1 has been clarified to show that the compartments face outwardly, and so that at least some of the compartments contact and provide a force against an inner surface of the opposing walls, causing the insert to remain partially inside the housing when the package is moved. Neither *Johnson* nor *Douglas* teaches or suggests the structural combination of elements described in Claim 1. Indeed, *Douglas* teaches away from that combination of elements. *Johnson* likewise teaches a device that does not have the structure to be reconfigured to teach or suggest Claim 1. Applicant therefore respectfully submits that Claim 1 and Claims 2 to 9 that depend therefrom are each structurally different and patentable over *Douglas* and *Johnson*. Claim 9 has been amended merely to conform with the elements set forth in Claim 1 as amended. The amendment to Claim 9 disclaims no subject matter and has not been made to narrow the claim.

Claim 10 has been clarified to show that the compartments are initially sealed and that the friction force created by the insert against the housing occurs both when each of the compartments is initially sealed with product and again when at least one of the compartments has been unsealed to remove one of the products. Claim 10 as clarified is structurally different and therefore not anticipated by *Johnson* because *Johnson* does not show, teach or suggest the use of sealed compartments. Claim 10 is also non-obvious in view of both *Johnson* and *Douglas* because *Douglas* does not cure the deficiencies of *Johnson* and vice-versa. That is, *Douglas* teaches folding the inserts so that the compartments face inwardly and spacing the compartments apart so that tension is not applied to the compartments. The compartments are expressly taught not to provide a tension force, whether sealed or unsealed. Accordingly, Applicant submits that Claim 10 and Claims 11 to 17 that depend therefrom are patentable over *Douglas* and *Johnson*, taken either alone or in combination.

Claim 18 has likewise been clarified to show that an outwardly extending portion of the insert that previously housed the product and at least contributed to the insert being biased against housing walls continues to provide such contribution to the biasing once reinserted into the housing. As discussed above, *Douglas* does not show, teach or suggest using a portion of the

insert that holds the product to at least contribute to biasing the insert against the walls of a housing. *Johnson* does not cure that deficiency and does not show an outwardly extending apparatus, an outwardly extending apparatus that houses initially a product or an outwardly extending apparatus that would be able to continue to contribute a biased relationship when the product is removed therefrom. Applicant respectfully submits therefore that Claim 18 is structurally different from *Douglas* and *Johnson* and submits that Claim 18 and Claims 19 to 21 that depend therefrom are each allowable at this time.

For the foregoing reasons, Applicant respectfully submits that the above-identified patent application is now in a condition for allowance and earnestly solicits reconsideration of same.

Respectfully submitted,

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